MEMORIAL

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In January, 1894, the Legislature of this Province appointed a commission to revise and amend the Code of Civil Procedure of Lower Canada and the laws connected therewith, (57 Vict., ch. 9). This commission has just completed its preliminary work and the Government has just laid its third report before the House of Assembly.

The Board of Notaries appreciating the importance to the profession whose interests are committed to it of watching the labors of this Commission, asked in the month of September, 1894, to be represented on it by one of its members for at least, the time during which the third part of the Code of Civil Procedure would be under consideration. This desire was a legitimate one, inasmuch as the third part of the Code of Civil Procedure has reference specially to the Inspection of documents, family councils, tutorships and curatorships, the sale of immoveables belonging to minors or other disqualified persons, to proceedings relating to successions, such as the affixing and removal of seals, the making of inventories, the sale of moveables, benefit of inventory, provisional possession, vacant successions, and arbitrations in general.

We regret to say that our profession was not given the benefit of representation while the work of the Commission

was being carried on. On the other hand, the interests of the Bar were in the hands of powerful protectors in the persons of the commissioners and the secretaries of the Commission, namely : two judges, quite recently risen from the ranks, and three lawyers.

Such was not the treatment due to the notarial profession the most ancient in the country, and which has done so much, particularly within the last twenty-five years, to ensure the carrying out of the law, and to secure for all the greatest possible security in the drafting of contracts and of the most important documents.

That justice which has been denied our profession, we now seek at the hands of the public, of the representatives of the people, and of the nine hundred notaries of this Province. If in certain quarters no account is taken of the efforts which have been made to raise the standard of the notarial profession in this Province by requiring of those who intend to enter into it a higher education, by practising the closest *surveillance* over its members, by punishing at the cost of the greatest sacrifices those among them who offend against professional honor, we are confident that a more enlightened and unprejudiced public will judge otherwise. The organic laws of the notarial profession have within a half century, on five different occasions, received the solemn recognition of the Parliaments, and we would not have it said that the simple caprice of interested functionaries could at a mere stroke of the pen, cause the most important provisions in them to disappear without any demand from the public and without any justification for so drastic a measure.

Let us see what the Commission appointed to revise and amend the Code of Civil Procedure has done.

Article 25 of the Code of Civil Procedure, as amended by article 5857 of the Revised Statutes of the Province of Quebec, reads as follows :

" Any party to a suit may appear and plead either in person or through the ministry of an attorney at law.

" Notaries may prepare the proceedings specified in the third part of this Code, and submit the same to the judge or to the prothonotary, and may even sign in the name of the petitioners all petitions necessary for such proceedings."

In the second report on their projected code, the Commissioners propose to replace this article 23 by the following:

" Any party to an action or to any other judicial proceeding may appear and plead either in person or through the ministry of an advocate."

They cut out, without more ado, the whole of the second paragraph of article 23, and thus take away from the notaries the right which they had *to prepare the proceedings specified in the third part of this Code, and submit the same to the judge or to the prothonotary, and to sign in the name of the petitioners all petitions necessary for such proceedings, to give it to advocates who may appear and plead in any action or other judicial proceeding.*

So radical a change would seem to require the support of some serious reason. A profession cannot be arbitrarily despoiled without being told why. The commissioners must have had before them numerous petitions to convince them that public sentiment required such an innovation. They intended, no doubt, to prevent dangerous abuses. Their attention was perhaps drawn to notorious facts which induced them to think that notaries were not sufficiently qualified to be able to conduct such proceedings.

In 1865, the commissioners entrusted with the codification of the laws of Lower Canada, and in 1887, the commissioner appointed to revise the Statutes of the Province of Quebec, coupled with the drafts of their work most learned and elaborate reports, which may still be consulted with profit.

Wherever they proposed a change, they took care to give a reason for it with an abundance of argument and quotation of texts, which render their work real monuments of erudition and science.

The commissioners who have had in hand the revision and amendment of the Code of Civil Procedure have not seen fit to follow this example. Where they condescend to make any observations, they do so with a truly marvellous concision.

On Art. 23, now in question and amended by them in so masterly a fashion, here are the simple remarks which they think proper to make. We quote from their second report, page 14 :

" Chapter V contains provisions applicable to all civil actions. No change is to be found in chapters V, VI, VII and VIII, saving the repeal of the second part of Article 23 of the Code of Civil Procedure of Lower Canada."

This is evidently a mockery, which it is surprising to find on the lips of grave magistrates.

Thus, at a single stroke of the pen, a whole profession is deprived of the right of conducting important proceedings, a right which custom and the law have allowed it to enjoy from time immemorial, and it is not thought necessary to give a reason for so doing. Did they wish to avoid discussion ? Or did they think that by drawing as little attention as possible to this crying injustice, it might pass unperceived ?

Some think that the commissioners did not attach to this subject the importance with which it is viewed by the notaries, that if they had felt the seriousness of the blow thus aimed at the profession, and thought of the increased expenses that would result thereform for families, they would have acted with more caution. We will not now discuss this point, but will take it up further on if necessary.

For the present, what is more important is to show how serious an injustice has been done, how the notarial profession is deprived of an important part of its functions, and in what position, family interests are placed through the increase in the heavy expenses with which they are already weighted down in the settlement of estates and in all the small proceedings which concern specially the patrimony and status of minors.

Under the Code as it now exists family councils are generally held before a notary, whenever it is necessary to provide minors, interdicts, absentees or substitutes, with tutors or curators or to authorize such tutors or curators to perform a particular act, or for all the other purposes mentioned in the third part of the Code of Civil Procedure. The law gives relations other means, but they prefer to have recourse to a notary, because in so doing they avoid journeyings and heavy expenses? The notary draws the deeds and presents them to the judge or prothonotary for homologation. Is not this a natural consequence? When bringing before him, the relations to consider affairs in the interest of the family the notary acts as the delegate of the Court: is it not therefore proper that he should himself report his proceedings to the authority from which his power emanates? Who can do so better than he? Who is in a better position to ask for the ratification of his own actions?

The codifiers, by Article 79, would confine the functions of the notary within the four walls of his office. As soon as the family council is over, as soon as tutors or curators are chosen, he must hand over his proceedings to an advocate, who in turn, for an additional fee, will undertake to draw up a petition to relate to the judge the deliberations of the family council at which he did not assist and to pray for approval thereof.

This is the way in which the codifiers, to carry out the will of the Legislature, which had instructed them to revise the Code so as to simplify proceedings and reduce costs, complicate machinery so simple, and double the expenses.

What we have just said with reference to tutorships and curatorships also applies to the sale of immoveables of minors and other incapables. In future a notary will conduct the proceedings, and, as desired by our codifiers, an advocate will undertake to have them approved of by the judge, but always in consideration of a fee.

What shall we say of the proceedings respecting successions? In the matter of the affixing of seals, the advocate alone in the future, will be allowed to demand it from the judge, and they will be affixed by the notary. The advocate, after the affixing, will again appear, and will take the report from the hands of the notary and will deposit it in the court. If the notary meets with difficulties in the affixing of the seals, he will have to make a report, submit it to an advocate, who in turn will hand it to the judge. The latter will give the notary fresh authority, still by the interposition of the advocate, who will transmit this new document, and so forth. And this is what our codifiers call simplifying proceedings and reducing costs!

In the case of inventories, with the practice as it exists, it is the notary who, being alone authorized to draw such deeds, applies to the judge to have it closed. In future this last proceeding will be in the hands of the advocate; and as this formality must be noted on the original inventory, the notary will have to hand it to the advocate, in spite of the law which forbids him under the severest penalties, to part with his deeds. It may be urged that he can accompany the advocate; but the party who is ordered to make the inventory, who has to pay the cost of it, will doubtless find that his expenses would have been less under the old system.

We point out these particular cases to shew how ridiculous and unjust is this innovation of our codifiers.

Former legislators, ripened by study and experience, thoroughly understood that all these simple proceedings of voluntary jurisdiction mentioned in the third part of our Code should be left to notaries. They also understood that the role the advocate is called upon to play in society is so great and so noble that he should not descend to meddle with such matters of detail.

It is said in some places that notaries by conducting these proceedings in chambers take from advocates an essential part of their privileges. Such a pretention would be a source of amusement to advocates in France, if they were aware of it. If the members of the Bar of this Province mean to be advocates, attorneys, and notaries combined, let them say so. We will then know on what ground to meet them, but then we shall ask for a share in the spoils.

Those who charge the notarial profession with a desire to encroach on the Bar, when they claim the right to conduct all proceedings of voluntary jurisdiction, are evidently unacquainted with their history of law.

We contend that from the origin of this colony, the special functions of notaries in all the cases under discussion, have been admitted in the most formal manner by the authorities, and that the profession has been assimilated unrestrictedly to that of notary in France. The proof of this assertion is quite easily made.

The right of notaries to make voluntary licitations has been much discussed of late. Let us see what took place two hundred years ago.

On the 30th June, 1692, a notary named Genaple who practised in Quebec, presented a petition to the Superior Council in which he complained of the *Lieutenant général*

civil et criminel, who sought to prevent notaries from making partitions and inventories. (Cf. Jugements et délibérations du Conseil Supérieur, Vol. III, p. 637).

" So far back as the year 1317 ", said he, it was ordained by edict of the King that notaries alone should make inventories and partitions of property, and all other officers of justice were prohibited from proceeding thereto. *Arrêts* of the 29th November, 1382, 20th July, 1384, and the 4th March, 1390, condemned commissioners who had made inventories to pay a fine of 100 *livres* and to give up to the notaries the fees which they had received. *Arrêts* were made in the same sense in 1512, 1542, 1543, 1568, 1573, 1577, inasmuch as inventories and partitions are acts of voluntary jurisdiction which should be made by notaries.

Those only which are ordered by judgment after contestation should be made by the judge, as well as whenever a matter relates to rights of foreigners, to escheats and to vacant property.

" Complaint was made to the Intendant when the *lieutenant de la prévôté* made the inventory of the property of the late Mr. de Comporte. The *lieutenant* then promised he should not do so again. Yet the King's attorney, Mr. Dupuy, who was aware of this decision, has just made an inventory of the property of the community of François Rivière."

Genaple prayed in consequence that the King's attorney should be condemned to surrender what he had received, and that the notaries should be authorized to make all inventories, except such as should be ordered by a judgment after contestation and in cases of escheats and vacant successions.

The Council postpones its decision until it should be called upon to make general rules ; but it was at once recognized that notaries had the right to make all acts of voluntary jurisdiction, and this is also established by all the old authors.

In 1706, the question was again raised, and on the 19th July, 1708, Raudot, the Intendant, made an ordonnance in which the rights of the notaries are clearly defined. (Cf. " Registre des Ordonnances des intendants, vol. II, p. 69, " and " Registre des insinuations de la prévôté de Québec, année 1709 " 15th January).

" Considering," it proceeds, " the petition presented to us by the notaries of this town, in which, for the reasons therein contained, they pray among other things that the *Lieutenant Général* of this town and the other officers of the *prévôté* be forbidden to make inventories on pain of all costs and damages to the parties and of restitution of the emoluments that they will have received, saving only the case in which by a judgment after contestation, an inventory will have been ordered, the petition served on the 19th January, 1706, and the other petition of said notaries of the 13th April, at the foot of which is an order that it be served to be answered within a week : considering the defence of the said *Lieutenant Général* of the 20th of the said month, and after having enquired into the custom followed respecting said inventories, seeing and considering the whole, and having heard the parties :

" We order that as to the rule prayed for by them, they shall have recourse to the King, and in the meantime as to the right of the *Lieutenant Général* of this town to make inventories initiated by the affixing of their seals concurrently with notaries accordingly as either of them is requested, and considering, moreover, that in withdrawing this right from the said *lieutenants généraux*, wherever notaries are called upon to make the said inventories, they could not be without much prejudice deprived of that which belongs to them of identifying and raising and re-affixing the seals at each ajournment of the said inventories which would inconve-

nience the parties by compelling them to avoid expense, to have recourse to them to the exclusion of the notaries who would thus be deprived of one of the principal functions of their office, and being moreover persuaded that the public welfare is to be preferred to that of individuals particularly in matters of this nature in which recourse must of necessity be had to officers of justice or of practitioners, we provisionally and until such time as it shall have pleased the King to order otherwise, do order that the *lieutenants généraux* and the notaries of this town shall make the inventories in question concurrently according as they shall have been requested by the parties, with this restriction that the *lieutenants généraux* shall attend at such as the notaries shall have been requested to make, only at the first adjournment to identify and raise their seals, which they will afterwards hand over to the notary entrusted with the making of the inventory, unless the party should request otherwise."

We quote these documents to show clearly that from the earliest period in this country, the notarial profession was assimilated to that in France, and that in conformity with the old *arrêts* it was admitted to have the right to make all acts of voluntary jurisdiction. It would, moreover, suffice to go through the minutes of the notaries of that time to see that inventories and acts of voluntary jurisdiction were essentially part of the duties of the profession. This was also the case after the cession. When in 1853, the old Parliament of Canada undertook to legislate on voluntary licitations (16 Vict. chap, 203), it is not to be supposed that new law was thereby introduced. On the contrary, it is stated in the preamble of the act, that in order to avoid inconvenience delays and expense it is desirable to regulate the procedure in voluntary licitations. This was simply regulating that which custom and the old laws already authorized. Notaries

were not invested with new functions, but were fully acknowledged to enjoy a right which had never been disputed. And so much is this the case that section 2 of the Act states "that proceedings shall be transmitted to the judge for homologation with a petition *which every notary is authorized hereby to certify in the ordinary way.*"

To conclude with the question of inventories, let us say that the codifiers, by taking away from notaries the right to pray for their judicial closure, deprive the profession of a right which it has admittedly had at all times in the colony. We refer specially under the French regime to the register of closures of inventories from the 27th April, 1744, to the 14th May, 1759, the only one which has been preserved.

The functions of the notary in this particular are so well recognized that sometimes the Intendant delegated to him the power of closing the inventory and of swearing the parties. (Cf. an ordonnance of the Intendant to notary Saillant, 6th June, 1750). Similar cases are to be found in the archives of the military period, and of that which extends from 1767 to 1785.

We are aware that for some years, the tendency of some judges has been to interpret Articles 298 and 299 of the Civil Code so as to prevent notaries from conducting the sale of the property of minors; but that jurisprudence has no justification either under the old laws nor under those passed in our Province since its foundation. At its sittings of May and October, 1882, the Board of Notaries protested against the report of the commissioner for the codification of the Statutes which suggested the suppression of the judicial power held by the prothonotaries and notaries in matters of jurisdiction. We refer to a memorial addressed by it at the time to the Attorney General, the Honorable Mr. Mousseau. It was so complete and the reasons therein set forth were so

weighty that those who were opposed to the practice followed at the time thought fit to go no further. The Honorable Judge Ramsay himself took the trouble to write to the Attorney General upholding the position taken by the notarial profession. It is worthy of remark that the codifiers of the Civil Code who had recommended to take away from the prothonotaries and commit to judges the power to homologate proceedings made by notaries admitted the necessity of leaving the notaries the exercise of these important functions.

In France, even in the case of forced licitations or partitions, the parties may be sent before notaries, as appears by article 970 of the Code of Civile Procedure. Carré, vol. V, Loi de la Procédure Civile, pp. 1518–1519, No. 2504,informs us that this right of the notaries had been disputed, but that subsequently all the authors who have written on the question and the judgments of the courts have held otherwise. This opinion, he adds, does not seem to him susceptible of doubt under the old law and it is still more manifest under the new law. We would also refer the reader who desires to thoroughly examine into this important question, to the profound and well supported essay published by Mr. L. Bélanger, Notary, in the Revue Légale last spring. (Vol. I, p. 186).

If it be desired to ascertain what formerly took place respecting tutorships and curatorships, the old archives bear witness to the fact that the authorities almost invariably delegated their powers to notaries, even under the French regime.

We are therefore surprised to find that the learned judges entrusted with the drafting of the Civil Code referred to this legislation as rather recent, (Cf. 1st, 2nd and 3rd Reports 1865, p. 206). It is sufficient to look at the registers of the ordonnances of the Intendants to ascertain the custom as it existed under the French regime.

We will here give some of the ordonnances made on the subject. If more numerous proofs are required, we can furnish them, but we do not wish to overload a memorial which is already long enough.

1715—January 4. Commission to Sr. St. Surain, notary, of the Seigniory of Batiscan, to proceed to the election of a tutor and subrogate tutor to the children of Pierre Arcan. (Reg. ord. int. vol. 6, p. 147).

1718—July 7. Ordonnance bearing a commission to Sieur Jeannot, notary, for deeds of tutorship in the Seigniory of Grande Anse, River Ouelle and Kamouraska. (Reg. ord. int. vol. 6, p. 310).

1720—March 9. Ordonnance bearing a commission to Sieur Jeannot, notary, of the Seigniory of La Bouteillerie, for the election of a tutor to the children of Pierre Courteau. (Ibid. p. 357).

1721—April 18. Commission to Sieur Jeannot, notary, at River Ouelle, to make a partition of the property of the late Jeanne Savouret among the heirs. (Ibid. vol. 7B, p. 59).

1722—September 3rd. Ordonnance authorizing Sieur Jeannot, notary, at River Ouelle, to close the inventory by him made of the property of the community between Pierre Roy, of Grand Kamouraska, and the late Marie Martin, his wife. (Ibid. vol. 8, p. 115).

1723—January. Ordonnance authorizing Sieur Abel Michon, Notary, of the South Shore, to proceed to the election of a tutor to the minor children of the late Louis Coté, of Pointe à la Caille, and then to make an inventory of the property of the said succession. (ibid. p. 4, vol. 9.)

1723—February 11. Ordonnance for holding a family council before Sieur Jeannot, Notary, to give their opinion as to whether it is to the advantage of the minor children of the late Guillaume Paradis to sell an immoveable belonging to them. (Vol. 9, p. 10, ibid.)

1728—February 15. Ordonnance appointing Sieur Jeannot, Notary, at River Ouelle, to proceed to the election of a tutor and subrogate tutor to the minor children of the late Andre Minier, of Grande Anse. (Vol. 14, p. 14, ibid.)

1728—February 17. — Ordonnance that the tutor and subrogate tutor of Marie Anne Pelletier, minor daugther, shall meet at the office of Sieur Jeannot, notary, with the relations to draw up a deed of acceptation or of renunciation to be made of the succession of Noël Pelletier, her father. (Vol 14, page 15, ibid.)

1734—April 7.—Ordonnance authorizing Sieur Pichet, notary, of the Island of Orleans, to proceed to the election of a tutor to the minor children of Joseph Faucher. (Ibid, vol. 22, p. 35.)

1740—January 23.—Ordonnance authorizing Mtre Jeannot, notary, of River Ouelle, for the election to be made of a tutor and subrogate tutor to the minor children of the late François Sirois. (Vol. 28, p. 2, ibid.)

1741—March 4.—Ordonnance appointing Mtre Jeannot, notary, of the South Shore, to proceed to the election of a tutor to the children of widow Noël le Sot. (Ibid. vol. 29, page 16.)

It is well to add that under the French regime, nearly all petitions praying for the convocation of family councils are signed by notary. To be convinced of this it will suffice to go through the records of tutorships from 1698 to 1706. We will quote the particular case of Notary Normandin, who, in 1706, signed on behalf of the petitioner a demand of tutorship and of inventory. Under the English regime we draw the special attention of the codifiers to the register of tutorships of 1786, a year after the division of the professions of advocate and notary, that most of the petitions praying for the convocation of family councils and the homologation of the proceedings are signed by notaries J. Bte Panet, of Lo-

rette, Alexandre Dumas, L. Cazes, Riverin, Deschenaux and Levesque.

It is also well to notice that immediately after the capitulation of Quebec, the English governor appointed two judges or commissioners Messrs. Lafontaine and Cugnet, one for the south shore and the other for the north shore, specially to take cognizance of all these questions of tutorship and of successions, and that all the proceedings before them were conducted and signed by notaries for their clients.

But, it may be said, what is the use of quoting precedents from the French regime? Can it be ignored that under this regime the profession of advocate did not exist, and that it was but natural that notaries should conduct these non-contentious proceedings?

Our pretension, say our adversaries, rests on the act of 1785 (25 Geo. III, ch. 4) which divided the profession of advocate from that of notary and forbade the latter to conduct any proceedings before a court.

Let us premise that we refer to precedents under the French regime to establish the antiquity of the right of notaries to conduct non-contentious proceedings. We are also aware that under this regime advocates were expressly forbidden to settle in the country inasmuch as their doing so was considered prejudicially to the interests of the colony. (Ed. et Ord. vol. 1, pp. 113, 116, 118, 127). As to the law of 1785 to which our adversaries refer, it is easy to show that they find in it much more than it contains.

Section 7 of the Statute enacts that " no person being a notary, shall be permitted to plead, or practise as a barrister, advocate, solicitor, attorney, or prochar at law, in any Court in this Province, or directly or indirectly sue out any writ or process whatever or commence, carry on or defend, any action or suit in the name or on behalf of any other person

whether by original writ, or on appeal, in any of His Majesty's Court within this Province : on pain of being disqualified from acting and exercising the functions of a notary as above said."

What is there in this to prevent a notary from presenting to a judge in chambers or to the prothonotary for homologation, the documents which he has drawn in his capacity as notary or as delegate of the court as well as the necessary petitions therefor. Would not the same section 7, which forbids advocates to pass any deed or contract or to conduct any other business legally within the province of the notary also deprive them of the right to make proceedings which are a natural consequence of acts of voluntary jurisdiction which notaries by custom and by law are authorized to conduct.

Moreover, it is established that from 1785, after the passing of this Act 25 George III, notaries continued as previously to present petitions to judges and to the clerks of the Court of Prerogatives, of Common Pleas, and of the King's Bench, respecting non-contentious proceedings. It is only necessary to consult the archives of these courts to be assured of this. They are found signing petitions in the name of their clients for the probate of holograph wills and of wills made in the English form. "Cf. Registres des testaments olographes de 1789 à 1824 et spécialement en 1816, p. 430."

The legislators under the English regime understood so well the part to be taken by notaries in all matters of procedure relating specially to minors and successions that as early as in the second session of the first Parliament, in 1793, they authorized the judges to appoint notaries to preside over family councils when minors were domiciled at more than fifteen miles from Quebec or Montreal. (34 Geo. III, c. 6). The same power was given them for the affixing and raising

of seals; and on consulting the records, it will be found that notaries proceeded at that time by petition as under the French *régime*. Judges had conferred upon themselves all the powers of the old Intendants in such matters. Geo. III, ch. 6, s. 8. And let it be observed that the right so granted to notaries was not given them at their own request, but by a general law providing for the administration of justice in the Province.

The object of those who governed, when taking these measures, was to save parties from expense and to simplify proceedings. It is for the same reason that in 1808 (48 Geo. III, ch. 22), power was given to notaries to administer the necessary oath of office to tutors. It was also thus, that by the force of circumstances, the authorities were brought to give notaries powers which had hitherto been exercised by the courts.

In 1851 (14–15 Vict., ch. 59), another step was taken by authorizing notaries to call family councils without the authorization of a judge, even when the parties did not reside beyond fifteen miles from Montreal and Quebec. This power was confirmed by a declaratory act of 1854 (18 Vic., ch. 17).

Let us repeat that the profession did not solicit these privileges. They were given by the Legislator from his knowledge of the wants and of the customs of the people. In the laws of 1793, as well as in those of 1808, 1851 and 1854, it was acknowledged that notaries had the right to present and to sign petitions adressed to a judge. Where then is there to be found the encroachment complained of? The practice was so well founded from time immemorial that in 1850, the Parliament of Canada legislated on this special point, declaring as follows :

" And notaries shall *continue* in the same manner as advocates and attorneys, to sign in the name of petitioning

parties, and without any other special power, memorials or petitions required for the calling together of meetings of relatives and friends in cases of tutelage, curatorship, sale of real property of minors and interdicted persons, divisions or licitations, and other like matters concerning family affairs and successions." (13-14 Vict., c. 39, sect. 11.)

The qualification of new law or of an encroachment cannot be applied to a law which has been in force for half a century and which is in reality the reproduction of a custom known to have existed from the establishment of the colony. Fifty years ago, notaries were in the continuing enjoyment of a practice of which it is now sought to deprive them. And in 1850, so little did it appear extraordinary in the eyes of the Legislature, that the bill known as chapter 39 of the Act 13-14 Vict., was unanimously voted, in which these provisions are to be found.

Since the passing of the law of 1850, the representatives of people have been called upon, on four different occasions to pronounce upon the same enactment, and they invariably acknowledged, in favor of the notaries, the rights which are now disputed.

We will now mention different statutes passed since 1850, in which section 11, chap. 39 of the Act 13-14 Victoria is almost literally transcribed.

1° The Act 33 Vict., ch. 28, sect. 40 (1870). This section 40 is the same as section 11 of chap. 39 of 13-14 Vict.

The bill was proposed in the Legislative Assembly by the Honourable Mr. Ouimet, the then Attorney General.

2° The Act 39 Vict., chap. 33, section 24 (1875), goes still further than the acts of 1850 and 1870. It provides as follows :

" Notaries may prepare the non-contentious proceedings specified in the third part of the Code of Civil Procedure,

and submit the same to the Judge or to the prothonotary ; and may especially sign, in the name of the applicants, without any special power, requests or petitions for the summoning of a family council, in relation to tutorships, curatorships, sale or alienation of the property of minors or interdicted persons, partition or licitation, homologation *en justice*, the affixing and the removal of seals as also all other petitions, or proceedings in which the action of the judicial authority, or of any other authority whatever is to be asked for."

This Bill was introduced by the Honourable Mr. Chapleau and was referred to a special committee of which the Honourable Messrs Ouimet, Angers, Irvine and Laframboise formed part.

3° The Act 46 Victoria, chap. 32, sect. 9, (1883), which consolidated all the former laws of the notarial profession, contained in the same provisions in almost the same words :

" Notaries may prepare the proceedings specified in the third part of the Code of Civil Procedure, and submit the same to the judge or to the prothonotary ; and may even sign, in the name of the petitioners, all petitions necessary for such proceedings."

The Honourable Judge Loranger who was appointed to consolidate the statutes of the Province of Quebec, found them so conformable to the laws which had always governed us, that he embodied them in Article 23 of the Code of Civil Procedure. It is thus that sect. 9, chap. 32, of the Act 46 Victoria became the second paragraph of Article 5857 of the Revised Statutes of the Province of Quebec, promulgated and published under the Acts 50 Victoria, chap. 5, and 51 Victoria, chap. 2.

The honourable commissioner, it is true, enunciated in his report certain vague and ill-defined accusations with reference to the looseness, the neglect, and the want of caution exhibited in the making of deeds of tutorship. (pp. 134 and 135).

The notaries answered triumphantly in the memorial of 1882, (p. 5,) which we have already quoted. The learned advocate had referred the profession to the records of the court, where, he said, was to be found the proof of his allegations. The notaries took up the challenge and undertook to make extracts from some of the records to prove that the proceedings conducted by them were in reality those which were made with the greatest care, because they were subject to the closest supervision. It was thought proper to make no answer and the Legislature proceeded, thinking no doubt with the commissioners who prepared the civil code, that the notary, in these non-contentious proceedings, was subject to the revising power of a judge, and that society had therein a double guarantee.

Moreover, no complaint has ever been made by the public in connection with the practice hitherto followed. In these proceedings advocates have concurrent power with the notaries, and yet, what do we see ? Nine-tenths of the cases are conducted by notaries. The public scarcely ever apply to advocates in such matters. A notary is instructed to wind up an estate, and is entrusted with the conduct of all the proceedings in connection therewith. It is found preferable to deal with one officer alone, and the result is almost always a saving of time and money. Let it be shown that a change is required in the interest of the public and we will submit to the finding.

Such is the history of the rights enjoyed by notaries from the founding of the colony, and which it is now sought to take away from them.

Nothing can justify the commissioners appointed to revise the Code of Civil Procedure in seeking to take them away. Had they given themselves the trouble to look into the origin of these rights, we are convinced that they would not

have lent their authority to the consummation of such a piece of iniquity.

Five years ago, at the session of 1890, a member tried to take away from the notaries the proceedings of which the codifiers would deprive them. Two bills drawn for that purpose were rejected at the second reading. The Assembly did not even do them the honour of voting upon them.

On the day after this failure, the 20th November, 1890, a widely circulated paper, the " Quebec Morning Chronicle," the organ of the English population of the Quebec district, said :

" The third part of the Code of Civil Procedure to which reference is made, includes that part of our procedure which require no pleading and are made before the Judge in Chambers. From time immemorial, they have enjoyed this privilege in common with the members of the Bar, and the Bar as a body has made no complaint. The system has worked well, and the only effect of the change, will be to impose higher fees and additional costs on the client, who will have to retain two professional men in place of one. What could have been done by one professional gentleman, if this bill becomes law, will have to be done, in certain cases, by two. Public interest is on the side of the notaries, and the law should remain as it is at present. Why should anybody be forced to select the services of a lawyer if the business can be as well done by his notary ? As the law stands it is optional for any person to select a lawyer or a notary for certain proceedings. Why should the public be deprived of this privilege ? "

This was only the expression of the public feeling with respect to the notarial profession. It should have been borne in mind, as Intendant Raudot said in 1702, that private interest should make way for that of the public. The rate-payers of this province, so heavily burdened with taxes of all kinds, require

prompt and economical justice. They want the complicated machinery of our courts to be simplified and costs lessened. They desire above all things to preserve their institutions, and their old customs, which were honoured and respected by their forefathers.

The time has not come to tear away from the oldest profession in the Province, rights and privileges which successive governments have acknowledged and which custom has solemnly sanctioned by a duration of two centuries.

We think proper to close this memorial with two important quotations.

On the 28th June, 1892, Mr. L. A. Hart, notary, and professor at McGill University, Montreal, wrote to the Commission appointed to consolidate the statutes, as follows :

" Among other objects, the reforms proposed by your commission very probably aim at the elevation of the legal profession. Your attention has also been directed to the reformation and elevation of the calling of bailiff. Is not the notarial profession deserving of similar consideration from your commission without entering into any eulogy of any profession ? I think I may state that the public are greatly concerned in seeing that its honor and importance be maintained, and the standard of our professional work kept up. These desirable results can only be achieved by inducing men of ability, integrity, and education to enter the ranks of the notarial profession. Such men will assuredly no longer do so if the field of notarial work, already limited, is to be still further narrowed, if the dignity of the profession is to be lowered by depriving it of any part of its judicial character, if, in short, its practitioners are not to be furnished with the objects of a noble and legitimate ambition.

" These remarks naturally lead me to touch upon a subject about which notaries feel very sore. There has been, of late

years, a constantly growing disposition on the part of advocates to encroach upon notarial ground. They advise their clients to make their wills, agreements, &c., as much as possible under private seal, in order that they may have the drafting of these documents, they attend to the probate of wills, the holding of family councils before the prothonotaries, the petitions and other proceedings, for the sale of the property of minors and other disqualified persons, builders' privileges, renewals of registration of real rights, declarations of transmission by will and by succession, and a host of other matters, all of which have until lately been properly considered to be essentially notarial work. Unless this disposition on the part of advocates be checked in some authoritative way, there will soon remain comparatively little for notaries to do, an inferior class of notaries will come in, and the public will ultimately suffer."

When the banking laws were consolidated, one of the most eminent members of the Federal Ministery of that time, the Minister of Justice, Sir John Thompson, said :—

" I would be happy to see the notarial profession established in all the provinces of our Confederation, in view of the numerous and incontestable services which it renders every day. I shall do all in my power to preserve intact the rights of notaries in the Province of Quebec."

Should not the opinion of this stateman induce those who oppose us, to do us at least the justice which we claim.

On behalf of the Committee of Legislation :

V. W. Larue, President,
E. A. Beaudry,
H. Brodie,
L. P. Sirois,
J. E. Boily,
J. Edmond Roy, Secretary.

As we are about to sign this memorial, the press brings us the report of a speech which the Honourable Attorney General Casgrain made in the Legislative Assembly when moving for a committee to examine the draft of the Revised Code of Civil Procedure. We are pleased to find that the learned advocate explained to the House the importance of the change proposed by the codifiers. " Is it right," said he, " that the notaries should be deprived of part of the functions which they have hitherto exercised ?

" I draw attention to the fact that notaries were the first advocates in this country.

" On reference to the History of Canadian Law by Lareau, it will be found that as advocates were not then known in the colony, proceedings were drawn up and conducted by notaries or by bailiffs bearing powers of attorney. It was only after the conquest, I think, that the distinction was made between advocates and notaries, and the latter were allowed the right to appear before the courts to conduct non-contentious proceedings. The same system obtains in France. In England, where the legal profession is divided between attorneys or barristers and solicitors, solicitors are not allowed to plead before the courts, but may represent parties before a judge in chambers in certain cases. About two years ago a bill was presented to this House having for its object to prevent notaries from representing parties in the proceedings mentioned in the third part of the Code, but it was not adopted. I do not know whether the House desires to reconsider its decision. We must remember that we are not here to represent advocates or notaries, farmers or doctors, but that our duty is to make the best possible laws for the public in general, without attempting to benefit one class of society more than another."

We would have preferred a clearer expression of opinion from the Honorable Attorney General. We are, however, happy to see that he admits the distinction between the profes-

sions of notary and advocate, here as in France and in England, and that he assimilates the notarial profession in Canada to that in France and to that of solicitors in England. This is a point in our favor.

Lareau is not quite accurate in saying that under the French *régime* the notary exercised the functions of an advocate. We think it proper to correct that statement. Before 1760, in Canada, parties in person or others holding their power of attorney were admitted to plead. Notaries and bailiffs appeared before the courts and conducted contentious proceedings; but then, it was only as practitioners. Non-contentious proceedings were conducted by notaries.

From 1760 to 1765, this legal or judicial state of things continued in the midst of the confused and transitory character of the times.

In the spring of 1765, the advocate appears prominently. (See *Collection Haldimand* B–I–Vol. I, p. 23). In 1766 the inhabitants prayed by petition that lawyers, both notaries and advocates be maintained in the exercise of their functions. From that date to 1785, some advocates practised as notaries and some notaries as advocates; but in order to do so, they had to obtain two different commissions from the Governor. The advocate was not *ipso facto* a notary nor the notary an advocate. Many followed but one of the two professions. Thus, we see, in 1780, Charles Stewart requesting a license to carry on the two professions of notary and advocate (*Collection Haldimand*, B–217 p. 131).

It was also in the same year that the notaries prayed to be maintained in their prerogatives which were disputed by certain advocates.

It was Governor Haldimand, who in 1784, decided to prevent in future the same person from exercising the professions of advocate and notary, as this plurality of profes-

sions gave rise to abuses and was the occasion of useless litigation.

This was the origin of the Ordinance 25 George III, chap. 4, which was adopted notwithstanding the protestations of those who practised both professions simultaneously.

During the whole of the long period of years from 1635 down to 1785 it is as notaries, and not as replacing advocates, practitioners or attorneys, that notaries conducted non-contentious proceedings.

The Ordinance of 1785, while setting apart the two professions, confirmed each one in its rights and preserved to each its proper functions.

We desire to give prominence to this point of history, because from an attentive examination of it will appear more clearly that notaries, when they ask to conduct proceedings in chambers, claim only the continuation of a right which they have at all times held, alone, under the French *régime*, and concurrently with advocates, under English rule.

We venture to hope that the broad views expressed by the Attorney General, when he says in his speech that the laws must not be made from the standpoint of any one particular profession, but in the general interest, will be acted upon.

Three of our *confrères*, the Honourable Mr. Marchand, and Messrs Tétrault and Gladu have been added to the committee to which the draft of the codifiers has been referred. It is a step in the direction of justice. It is to be believed that the committee before coming to a final conclusion will examine this memorial which we humbly submit to it, as well as to all our *confrères* in the profession.